



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON, D.C. 20370-5100

TRG

Docket No: 1172-00

2 November 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 31 October 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 20 February 1992 for four years. On 16 August 1992 you received nonjudicial punishment for an unauthorized absence of about 10 days. In February 1993 you were referred for a psychiatric evaluation because of your inability to cope with military life. This evaluation states, in part, as follows:

... (He) has a long history of impulsive and out of control behavior dating back to his childhood He admitted to frequent suicidal thoughts, the most recent being three months ago, but he denied any intent or plan to kill himself.

... He described a childhood replete with behavioral and academic difficulties. He frequently engaged in physical fights, sometimes using sticks and poles. He was suspended from school numerous times for fighting and truancy and he eventually dropped out of school. He reported that he was a "skinhead" for about a year when he was 16 and he admitted that he continues to

have fantasies of hurting Black people. He was arrested once at age 17 for breaking into a building. ... He married at age 19 while he was UA and using drugs and after knowing the woman for only one month.

... (He) admitted to significant alcohol use, at times drinking on a daily basis. He admitted to blackouts, increased tolerance, morning drinks, and attempts to control his drinking. ... He admitted to experimentation with marijuana in high school and also to using marijuana and LSD while UA from the Navy in July 92.

... (His) occupational performance reflects poor adjustment to the Navy characterized by a ... period of UA during which he used illegal substances, frequent conflicts with superiors, frequent physical fights aboard ship and below average evaluations ... He is currently on report for hitting a shipmate.

On 25 February 1993 you were diagnosed with a severe antisocial personality disorder and alcohol dependence. Since you were considered a risk to harm yourself or others, expeditious administrative separation was recommended.

On 8 March 1993 you were notified of separation processing due to the diagnosed personality disorder. At that time you stated "I do not object to this separation" and waived your right to consult with counsel. Subsequently, the discharge authority directed your discharge. You were honorably discharged on 11 March 1993. At that time, you were not recommended for reenlistment and were assigned an RE-4 reenlistment code.

You contend in your application that the psychiatric evaluation is erroneous because it wrongfully and inaccurately diagnosed you with a personality disorder and the narrative in the evaluation is inaccurate and misleading. You further contend that your discharge was in error because you were involuntarily discharged without procedural or substantive due process and without being afforded the right to consult with an attorney prior to discharge. You have submitted evidence showing that, after a psychiatric evaluation, you were granted unescorted access to a nuclear power plant. You are requesting changes in the reason for discharge and reenlistment code. In addition, you are requesting that the documentation concerning the psychiatric evaluation be expunged from your record.

The Board believed that the history sections in the psychiatric evaluation could only have been prepared based on information you or your command provided. The Board noted that although you have been given a psychiatric evaluation and granted access to a

nuclear power plant, you have not submitted a detailed psychiatric evaluation which discusses the evaluation prepared by the Navy and refutes the conclusions that you have a personality disorder and were alcohol dependent. If you provided a false history in order to gain discharge, it is well settled in the law that an individual who perpetrates a fraud in order to be discharged should not benefit from that fraud when it is discovered. Finally, the Board noted that you waived your right to consult with counsel and that your discharge processing was conducted in accordance with the applicable regulations. Given the circumstances, the Board concluded that the reason for your discharge and reenlistment code should not be changed and there is no basis to remove the psychiatric diagnosis from your record.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director